

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-0332V

Filed: March 27, 2019

UNPUBLISHED

DEREK CLARK,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for petitioner.

Meredith Burns Healy, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On March 5, 2018, Derek Clark (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that he suffered a right shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered to his right shoulder on November 15, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On February 27, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On March 27, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$57,239.95

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

(representing \$52,500.00 in pain and suffering and \$4,739.95 in past unreimbursable expenses). Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$57,239.95** (representing \$52,500.00 in pain and suffering and \$4,739.95 in past unreimbursable expenses) **in the form of a check payable to petitioner, Derek Clark**. This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

DEREK CLARK,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-332V

Chief Special Master Dorsey

ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On March 5, 2018, Derek Clark (“petitioner”) filed a petition for vaccine injury compensation alleging that he suffered a right shoulder injury related to vaccine administration (“SIRVA”), a Table injury, following receipt of an influenza (“flu”) vaccination administered on November 15, 2016. Respondent filed his Rule 4(c) Report conceding entitlement to compensation on February 27, 2019. The Chief Special Master issued a Ruling on Entitlement that same day.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded **\$52,500.00** in pain and suffering. Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents his expenditure of past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of **\$4,739.95**. Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of **\$57,239.95** in the form of a check payable to petitioner.^{1,2}

Petitioner agrees.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

C. SALVATORE D’ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

GABRIELLE M. FIELDING
Assistant Director
Torts Branch, Civil Division

s/ Meredith B. Healy

MEREDITH B. HEALY
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel.: 202.616.4187
E-mail: meredith.b.healy@usdoj.gov

DATED: March 27, 2019

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

² Petitioner is a competent adult. Proof of guardianship is not required in this case.